BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of:	
In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	WC Docket No. 17-84
In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment	WT Docket No. 17-79

REPLY COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION

AROCLES AGUILAR
HELEN M. MICKIEWICZ
JONATHAN KOLTZ
CHRISTOPHER WITTEMAN

505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (415) 703-1319
Facsimile: (415) 703-2262
Email: hmm@cpuc.ca.gov, wit@cpuc.ca.gov

Attorneys for
California Public Utilities Commission

July 17, 2017

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I. Introduction

On June 15, 2017, the California Public Utilities Commission (CPUC or California) timely commented on the Federal Communications Commission's (FCC or Commission) *Notice of Proposed Rulemakin*g (*NPRM*), and *Notice of Inquiry* in WC Docket No. 17-84, *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment (Wireline Deployment NPRM)*, and in WT Docket No. 17-79 *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment (Wireless Deployment NPRM)*. The CPUC now submits these reply comments.

We divided our June 15, 2017 comments in two: the first section addressed matters that were common to both *NPRMs*; the second section addressed those that were unique to the *Wireline Deployment NPRM*. We follow that convention here as well.

These reply comments are not exhaustive. Silence with respect to any party's comments should not be construed as assent or dissent.

II. Reply to comments on issues common to both NPRMs

A. Agreement and misunderstanding about the role of poles & conduit in promoting broadband deployment

1. Commenters agree that safety is an essential issue.

Commenters as diverse as the Pennsylvania PUC (Pa. PUC),[1] the American Cable

[1] Pa. PUC Comments at 4 ("Pa. PUC respectfully submits that the state agency and legislature are better positioned to oversee service quality, reliability, adequacy, safety and other related issues affecting its citizens than a federal regulatory agency"). Unless otherwise noted, all citations to comments in this item refer to comments filed in WC Docket No. 17-84 and WT Docket No. 17-79.

Association (ACA),[2] the California, Arizona, and Oregon Leagues of Cities,[3] and the Communications Workers of America (CWA)[4] agree that safety is the *sine que non* of utility infrastructure operations. The law reflects this imperative. Under both energy and telecommunications law, under both the FERC and the FCC regimes, states have primary authority to ensure the safety of the energy and communications infrastructure.[5]

As documented in the CPUC's June 15, 2017 Comments, safety is a special concern in California, where some of the largest population centers in the country exist in close proximity with dry, scrubby, and highly flammable rural areas. The CPUC included an Appendix A to those Comments, describing recent wildfires and windstorms, and the havoc they wreaked with utility infrastructure. The safety of poles and pole attachments is also currently being litigated in CPUC proceedings growing out of these wildfires.[6] Appendix A should not be construed as expressing any opinion regarding the outcome of these proceedings.

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[2] ACA Comments at 22-23 ("ACA members understand that failing or inadequately maintained pole infrastructure represents a major risk for accidents and service interruptions in surrounding communities and that utilities need to ensure the safety and reliability of poles.").

[3] Leagues' Comments at 10 (cities "may require a building permit to ensure structural safety").

[4] CWA Comments at 3-7.

[5] The Energy Policy Act of 2005 provides that it shall not "be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such action is not inconsistent with any reliability standard." 16 U.S.C. § 824o(i)(3). And as noted in CPUC's Opening Comments, California has opted, under the 1996 Telecommunications Act, to regulate pole and conduit attachment pursuant to state law. Opening Comments at 2, citing 47 U.S.C. § 224(c); *see also* 47 U.S.C. § 253(b) (authority reserved in the states to "protect the public safety and welfare"). Likewise, the Cable Communications Policy Act of 1984 grants states jurisdiction over cable service in safety matters. 47 U.S.C. § 556 (a); *see* also Cal. Pub. Util. Code § 768.5 (CPUC authority to regulate cable companies with respect to the safe operation, maintenance, and construction of their facilities).

California has used its inherent and delegated authority to propound safety standards for poles and conduits. *See* General Orders 95 and 128, respectively, available at http://www.cpuc.ca.gov/generalorders/. The CPUC also exercises jurisdiction over electric distribution facilities, and has authority to oversee reliability of those facilities, including utility poles. California possesses authority delegated by FERC and implemented by the North American Electric Reliability Corporation (NERC), which cannot be diminished by FCC action.

[6] *See* R.15-05-056, A.15-09-010; compare I.08-11-007.

2. Comments suggest consensus that information availability is necessary to facilitate broadband deployment

The ACA, among others, echoes the proposition—found in the FCC's two *NPRMs* and in the CPUC's June 15th Comments—that transparency and the availability of information are necessary prerequisites to broadband deployment. While noting early FCC skepticism about shared databases, the ACA observes that "[u]tility use of electronic pole databases has increased greatly since 2011 and many utilities share their pole databases with attachers."[7] The CPUC may not fully share the ACA's optimism here, but appreciates its documentation of both the access that one pole owning utility provided to an infrastructure database, as well as the failure of other utilities to do so.[8]

A shared data management system for utility support structures may be an idea whose time has come. Although the FCC decided that a cost-benefit analysis did not justify a shared database in 2011, by 2014 technology had advanced sufficiently for the European Union to declare that electronic mapping could "allow coordinated access to information on physical infrastructures for public communications network providers, while at the same time ensuring the security and integrity of any such information."[9] Effective January 1, 2017, the German Network Agency is requiring utilities to contribute to an "Infrastructure Atlas" that will be available to stakeholders (though not the public).[10]

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[7] ACA Comments at 14.

[8] *Id.* at 14-15, and referenced Declarations regarding Alabama Power's database, and the lack of similar databases in Iowa and other States. ACA also cites the CPUC's March 17, 2017 workshop on pole and conduit database management, available online at http://www.cpuc.ca.gov/general.aspx?id=6442453019.

[9] EU Directive 2014/61/EU on measures to reduce the cost of deploying high-speed electronic networks, available at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0061&from=EN, at 21.

[10] *See Gesetz zur Erleichterung des Ausbaus digitaler Hochgeschwindigkeitsnetze* [Law to Promote the Deployment of Digital High-Speed Networks (DigiNetzG)], available at https://www.gesetze-im-

On July 10, 2017, the CPUC opened an Investigation into the creation of a shared data management system of utility poles and conduit in California, as well as a Rulemaking to increase competitive carrier access to poles.[11] We appreciate the commenters here who suggested the creation of such shared information resources, and look forward to exploring this further in the California proceeding.

3. The NCTA unfairly characterizes the CPUC's pole & conduit proceedings

NCTA, "the Internet and Television Association," complains that a decision of the California Commission has had the "effect of prohibiting the ability" of its members "to provide any interstate or intrastate telecommunications service."[12] According to NCTA, the CPUC "has determined that a cable operator must obtain certification as a facilities-based CMRS carrier before it may install wireless equipment on poles."[13] Unfortunately for NCTA, the reality is more complicated.

NCTA's sister organization, the California Cable and Telecommunications Association (CCTA), submitted an Application to the CPUC to expand its members' pole

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internet.de/tkg_2004/BJNR119000004.html (primarily at sections 77(a)-(p) of the German Telecommunications Law (TKG); further information is available at http://www.bundesrat.de/SharedDocs/drucksachen/2016/0401-0500/466-16.pdf?__blob=publicationFile&v=1 (p. 3); and the Network Agency's FAQ is available at https://www.bundesnetzagentur.de/DE/Sachgebiete/Telekommunikation/Unternehmen_Institutionen/ZIdB/haeufiggestelltefragen/haeufiggestelltefragen-node.html.

[11] Investigation 17-06-027 into the Creation of a Shared Database or Statewide Census of Utility Poles and Conduit in California, and Rulemaking 17-06-027 regarding Access by Competitive Communications Providers to California Utility Poles and Conduit, Consistent with the Commission's Safety Regulations, available at http://docs.cpuc.ca.gov/SearchRes.aspx?docformat=ALL&DocID=191656519.

[12] NCTA Comments at 28. The CPUC notes that the re-classification of broadband as an information service, contemplated by the FCC in its "Restoring Internet Freedom" docket, would have the effect of taking broadband out of the protection accorded to "telecommunications" carriers under Section 253.

[13] *Id.,* citing CPUC Decision 17-02-006 at 17-18 (Feb. 10, 2017). The Decision is available at http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M175/K617/175617161.PDF.

attachment authority beyond that accorded California "cable television corporations" by state law. Indeed, the California Public Utilities Code defines cable television corporations and their rights to access utility support structures exclusively in terms of wireline facilities.[14]

Exactly what authority CCTA wanted for its members remained ambiguous, however, as the CPUC found. In light of this, it was *CCTA* that *requested* dismissal of its Petition:

> Given that the [CPUC] does not have all of the facts related to services provided by cable providers and admits that the Petition is "fundamentally ambiguous," prudence supports dismissal of the petition in its entirety without prejudice. Upon receipt of further information, the [CPUC] may choose to revisit the ruling.[15]

The CPUC obliged, dismissing CCTA's Petition without prejudice.[16] CCTA has not yet provided the promised "further information," or refiled its Petition.[17]

There is some irony here. NCTA complains that CPUC is frustrating the ability of telecommunications carriers to enter and compete in the California market. But it fails to recognize that the CPUC, in the last couple of years, has instituted three major

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[14] For example, Cal. Pub. Util. Code § 216.4 defines a cable television corporation as "a corporation or firm which transmits television programs over cable to subscribers for a fee" while Code § 767.5(3) defines a pole attachment for a cable television corporation as any attachment to surplus space or use of excess capacity for a wire communications system. Specifically, § 767.5(3) defines a pole attachment as follows: " Pole attachment means any attachment to surplus space, or use of excess capacity, by a cable television corporation for a wire communication system on or in any support structure located on or in any right-of-way or easement owned, controlled, or used by a public utility."

[15] CCTA February 1, 2017 Comments on Proposed Decision, at 11.

[16] D.17-02-006, at 10.

[17] Moreover, most, if not all, of CCTA's members have a CLEC affiliate, and the petition of those affiliates for authority is going forward. *See* R.17-03-009. Cox's CLEC affiliate, for example, is quite active in that proceeding.

proceedings to provide better pole and conduit access for wireless and other competing carriers. This includes the above-referenced Investigation and Rulemaking, which we instituted since NCTA filed its Comments.[18]

B. The CPUC agrees that the FCC may not use Section 253 to promulgate rules that preempt state and local laws wholesale

In the two *NPRMs*, the Commission asked for comment on its "authority under Section 253 to adopt rules that prospectively prohibit the enforcement of local laws that would otherwise prevent or hinder the provision of telecommunications service."[19] In its opening comments, the CPUC disagreed with that suggestion for three reasons: *first*, the plain language of the statute permits only narrow preemption through adjudication, not broad preemption through rulemaking; *second*, the scope of preemption contemplated here is impermissibly vague; and *third*, the scope of preemption contemplated here would intrude on the states' unquestioned prerogative to protect the health and welfare of their citizens.[20] We therefore agree with those commenters who seek to preserve the rights of the states to reasonably regulate intrastate matters that do not interfere with the provision of telecommunications service.

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[18] Rulemaking 14-05-001 Regarding the Applicability of the Commission's Right-of-Way Rules to Commercial Mobile Radio Service Carriers (access provided in D.16-01-046); Rulemaking 17-03-009 to Consider Amendments to the Revised Right-of-Way Rules Adopted by Decision 16-01-046 (CLEC access); and Investigation 17-06-027 and Rulemaking 17-06-028, *supra.*

[19] *Wireline Deployment NPRM*, ¶ 109; *Wireless Deployment NPRM*, ¶ 88.

[20] CPUC Comments at 9-17.

1. The FCC may not and should not use Section 253 to preempt state carrier-of-last-resort rules

In the opening round, several incumbent LECs—AT&T and Frontier—asserted that the FCC should use § 253 of the Telecommunications Act to preempt state carrier-of-last-resort, or "COLR", rules.[21] California disagrees.

Both AT&T and Frontier make a curious bank-shot argument. Neither asserts that state COLR rules inhibit the provision of telecommunications service, as § 253 requires. Instead, both argue that state COLR rules force them to spend money on legacy services that they might otherwise spend on deploying new broadband services. AT&T, for example, writes that "many states require overly burdensome approval processes for the withdrawal of . . . intrastate services" and "every dollar spent on legacy TDM networks and services is another dollar stranded in obsolete facilities and services that cannot be invested in deploying next-generation broadband networks."[22] This argument fails for at least four reasons.

First, these arguments are pure *ipse dixit*. They assert without proof both that the state COLR rules impose undue costs on carriers, and that, freed of this burden, the carriers would, in lieu of functioning as COLRs, necessarily direct this money toward new development. If this were true, presumably the carriers would offer concrete evidence. AT&T recognizes that some states—it names Florida, Missouri, North

[21] *See* AT&T Comments at 75-76; Frontier Comments at 34-35. Properly speaking, because the COLR rules only apply to facilities-based wireline providers, not wireless providers, these reply comments should fall in Section III below. But since other Section 253 issues apply in both the wireline and wireless contexts, in order to keep the issues grouped together, we provide these comments here.

[22] AT&T Comments at 75-76; *see* also Frontier Comments at 35 (writing that COLR rules "impose additional costs if Frontier builds out new voice telephone service" and "also potentially force[] additional costs related to litigation").

Carolina, and Wisconsin—have repealed their COLR rules.[23] It would seem relevant to compare money spent on broadband deployment in Florida, for example, both before and after the COLR repeal. Relying on the arguments of AT&T and Frontier, a one-to-one relationship between the repeal and new investment would be manifest. Yet neither carrier offers any such data.

Second, the conclusion does not follow from the premise. Making it harder to discontinue one service is not the same thing as inhibiting the provision of another service. And even assuming that the COLR rules impose some costs on the carriers, neither AT&T nor Frontier argues—nor could they plausibly argue—that every dollar spent on their COLR obligations is a dollar diverted from broadband deployment. Rather, it would seem that if the carriers found it profitable to build out new infrastructure, they would do so, whatever their other obligations. Indeed, how AT&T and Frontier allocate their corporate resources is their business; such management decisions have no bearing on state COLR rules.

Third, both AT&T and Frontier argue that state COLR rules single out incumbent LECs for special treatment and that they are forced to maintain legacy services.[24] At least in California, this is not true. In California, a COLR is any telecommunications carrier that has accepted the franchise obligation to serve in that carrier's service area all

[23] *See* AT&T Comments at 76, note 206.

[24] *See* AT&T Comments at 76 ("[M]any of these requirements impose asymmetric costs on ILECs alone, thereby putting ILECs at a competitive disadvantage relative to other telecommunications providers."); Frontier Comments at 35 ("[I]f states impose obligations on just one provider . . . it creates a distorted competitive landscape, disadvantaging only one competitor, and directly detracting from broadband deployment.").

customers who request service.[25] As we explained in our June 15, 2017 comments, the fundamental COLR requirement in California is that COLRs must provide basic service within their territories, which the CPUC in 2012 defined as having has nine elements.[26] Basic service in California can be provided using any technology,[27] a fact that AT&T has neglected to mention in its comments.

Fourth, and finally, the structural arguments regarding § 253 preemption that we raised in our opening comments apply here as well. Were the FCC to determine—despite the lack of evidence—that state COLR rules somehow interfere with the provision of telecommunications service, at most the FCC could preempt *the enforcement* of those rules *to the extent necessary* to remedy the interference. For it to do otherwise would violate not only the text of the law itself, but the cooperative federalism that underlies the Telecommunications Act, and the states' historic powers to protect their citizens.

California COLRs must provide their customers with "the minimum level of service that consumers [have] come to expect"; "services that are essential to all residential telephone customers."[28] In promulgating those requirements, we sought to "promote competition by technological neutrality while preserving the essential consumer protections."[29] Those rules are especially important in areas where competition

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[25] *Re Universal Service and Compliance with the Mandates of Assembly Bill 3643*, Decision No. 96-10-066, 68 Cal. P.U.C.2d 524, 676 (1996) (Appendix B, Rule 6.D.4).

[26] CPUC Comments at 24-25; *see also Decision Adopting Basic Service Revisions*, Decision No. 12-12-038, 2012 Cal. PUC LEXIS 597, at **27-28.

[27] 2012 Cal. PUC LEXIS 597, at *88 ("Any carrier may use any technology to satisfy any obligation to provide basic service . . . .").

[28] *Id.* at *19.

[29] *Id.* at *8.

is absent or weak, or for customers who are particularly vulnerable, like lower-income and disabled customers. AT&T and Frontier failed to show that those rules violate § 253.

2. The FCC should not use Section 253 to preempt state service quality rules

The CPUC strongly supports service quality rules, as evidenced by its 2016 decision requiring carriers to meet critical quality measurements and to report major service outages.[30] The CPUC is mandated by state law to ensure that utility service, including telecommunications service, is "adequate," and that customers receive "just and reasonable service."[31] California instituted service quality rules in 1973, which established uniform minimum standards for public utility "telephone corporations," as defined in California Public Utilities Code § 234, a category that includes local exchange carriers, long distance providers, wireless providers, and resellers of various services.[32] Since its adoption, the CPUC has modified General Order 133 several times to adapt reporting requirements to evolving technologies, and to keep service standards aligned with the competitive marketplace.[33]

Accordingly, the CPUC agrees with NARUC's position opposing "any preemption that supplants State regulation of intrastate telecommunications with FCC mandates," and

[30] Decision 16-08-021 (R.11-12-001) General Order 133-D

[31] Cal. Pub. Util. Code § 451: Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

[32] Cal. Pub. Util. Code § 234(a): "Telephone corporation" includes every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state.

[33] *See* CPUC General Order 133-D http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Proceedings/Proceedings_Rules/GO133D.pdf

noting that §§ 224 and 253 of the 1996 Telecommunications Act set clear limits on FCC authority.[34] The Alarm Industry Communications Committee ("AICC") correctly asserts that the Commission should not preempt state laws requiring maintenance and service equality standards, which have helped ensure that the traditional TDM-based public communications network meets the highest standards of availability, reliability, and functionality to the benefit of all consumers.[35] Preempting state oversight of service quality, a traditional state function, could leave customers without recourse when provided with marginal or substandard service.

Further, the CPUC agrees with CALTEL's characterization of California law as requiring all public utilities to furnish and maintain equipment and facilities so as to provide safe and reliable service. Contrary to the claims of the incumbent LECs, CALTEL properly recognizes that the CPUC's rules "do not create extensive additional obligations on AT&T and Frontier."[36]

III. Reply to comments on issues unique to the *Wireline Deployment NPRM*

A. The FCC should leave the copper retirement notice provisions intact

1. Reducing notice periods and eliminating notice to certain recipients would harm access to alarm, emergency, critical infrastructure, and 9-1-1 services

The CPUC agrees with commenters who oppose rolling back notice periods for discontinuance of service, including those to both retail and wholesale customers.

[34] NARUC Comments at 3.

[35] AICC Comments at ii.

[36] CALTEL Comments at 20.

Specifically, the CPUC concurs with Consumer Advocates for the Deaf, who note that a significant number of Americans continue to rely on TTYs, and that notices of discontinued service are especially critical to ensure that disabled consumers continue to have access to 9-1-1 service.[37] Similarly, the Pa. PUC opposes any effort to revise the current copper retirement process to eliminate advance notice of direct notice requirements regarding copper retirements.[38] The CPUC agrees with the National Rural Electric Cooperative Association that some applications have unique requirements which electric utilities rely on, and that migrating utilities off copper thus requires adequate notice time to avoid interrupting public safety functions.[39] Accordingly, the FCC should retain the notice periods adopted in 2015.

[37] Consumer Advocates for the Deaf Comments at 3.

[38] Pa. PUC Comments at 2.

[39] NRECA Comments at 10.

2. The FCC's proposed changes would harm wholesale markets

The CPUC agrees with commenters that competition should not suffer from the proposed rollback of rules, particularly in the wholesale market, including any diminution of or elimination of notice to wholesale customers. For example, California concurs with the Pa. PUC comments that interconnecting entities, competitors, and other affected parties, including the states, should continue to receive advance notice of copper retirements before the FCC allows a carrier to remove from the marketplace legacy facilities and the existing services offered over those facilities.[40] The CPUC further agrees with the AARP's comments, which cite to a 2016 study based on FCC Form 477 data and filed in a CPUC investigation into the state of competition in California. There, as the AARP notes, the CPUC found that most California households face a duopoly market for broadband service at any speed. Further, the study also found that for broadband at speeds above 25 Mbps downstream, the overwhelming majority of California households face monopoly market conditions.

The FCC should not take steps that would reduce, rather than enhance, competition in the various telecommunications markets by limiting notice to competitors.

3. The FCC should retain the functional equivalent test

The CPUC opposes the position advocated by AT&T and Comcast, that the FCC should eliminate the functional equivalency test.[41] CPUC agrees with the comments of

[40] Pa. PUC Comments at 2.

[41] AT&T Comments at 45; Comcast Comments at 4.

NASUCA and the Greenlining Institute, and with the expert testimony of Susan Baldwin on behalf of TURN, which all support retaining the functional equivalency test.[42]

"Functional equivalency" simply refers to consumers' ability to use the network in the same manner to perform the same functions they do today, independent of the technology used. Thus, whether a customer is making a voice call, texting, or transmitting data over a service provider's network, the customer's experience should not change depending on what underlying facilities the customer is using.

The CPUC has established a program designed to provide telecommunications services and specialized telecommunications equipment to the deaf, hard-of-hearing, and other disabled communities – the California Deaf and Disabled Telecommunications Program (DDTP).[43] The DDTP uses a functional equivalency test to ensure that this community of users does not suffer from interrupted service because of a network incompatibility with the devices they use today. The CPUC has further required public utilities to furnish adequate service,[44] and while that requirement historically has applied to telephony, California law is technology-neutral, and contemplates that service quality shall be maintained regardless of the technology used to deliver the service.

4. The FCC should keep "feeder cable" as a component of "copper retirement"

In 2015, the FCC proposed that the definition of "copper retirement" include three components – copper loops, subloops, and the feeder portion of the loop (feeder

[42] NASUCA Comments at 28; Greenlining Comments at 9; Baldwin Testimony at 16.

[43] Cal. Pub. Util. Code § 2881.

[44] Cal. Pub. Util. Code § 451.

cable).[45] In comments submitted in response to the 2015 *NPRM*, the CPUC supported the FCC's proposal, noting that "[a] CLEC's use of an ILEC's facilities for provisioning service may depend on access to all three components."[46] The CPUC advocates that same position here, and in so doing, agrees with other commenters, including the Pennsylvania PUC: "the PA. PUC agrees that if the feeder portion of the loop is unavailable for unbundled access, the practical difficulty of obtaining wholesale access to the remaining portion of the loop essentially forecloses competitive access to the retail customer."[47] California shares these concerns and urges the FCC not to eliminate the feeder cable component from the definition of "copper retirement."

IV. Conclusion

The CPUC urges the FCC to retain the rules for copper retirement adopted in 2015. In addition, California has commented here on the FCC's proposals regarding pole issues, and will continue to participate in this and other FCC proceedings addressing pole issues.

Respectfully submitted,

/s/ HELEN M. MICKIEWICZ

HELEN M. MICKIEWICZ

Attorney for the
California Public Utilities Commission

July 17, 2017

[45] 2015 *NPRM*, ¶ 50.

[46] CPUC Comments in GN Docket No. 13-5 et al., at 9 (filed Feb. 26, 2015).

[47] Pa. PUC Comments at 5. *See also* NASUCA Comments at 8 ("With respect to feeder, the Commission correctly observed that if a CLEC cannot access the feeder portion of a loop, 'the practical difficulty of accessing the remaining portion of the loop for retail purposes is insurmountable'"); accord CWA Comments at 9; CALTEL Comments at 8.